

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**GLENN R. MINDEN**

Claimant

VS.

**PAOLA HOUSING AUTHORITY**

Respondent

AND

**TRAVELERS INDEMNITY CO.  
OF AMERICA**

Insurance Carrier

Docket No. 1,025,883

**ORDER**

Claimant requested review of the May 26, 2006, Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

**ISSUES**

The Administrative Law Judge (ALJ) denied claimant's request for temporary total and temporary partial disability compensation.

Claimant argues that he was terminated without legitimate cause and that the ALJ exceeded his jurisdiction by denying an award of preliminary benefits.

Respondent argues that the Board has no jurisdiction to review the ALJ's decision denying temporary disability benefits. In the alternative, respondent contends that even if the Board had jurisdiction, the evidence supports the denial of preliminary benefits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, together with the briefs of the parties, the Board finds and concludes that it does not have jurisdiction of the issue raised at this juncture of the proceedings and, therefore, this appeal from the ALJ's preliminary order should be dismissed.

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only allegations that an administrative law judge exceeded his or her jurisdiction.<sup>1</sup> This includes review of the preliminary hearing issues listed in K.S.A. 44-534a(a)(2) as jurisdictional issues, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act.<sup>2</sup>

The issue of whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). Additionally, the issue of whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>3</sup>

An ALJ has the jurisdiction and authority to grant or deny temporary total disability benefits at a preliminary hearing. Accordingly, the ALJ did not exceed his jurisdiction by denying an award of temporary total disability benefits and the Board, therefore, does not have jurisdiction to address this issue at this juncture of the proceedings. When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.<sup>4</sup> Accordingly, claimant's appeal is dismissed.

The claimant may preserve the issue for final award as provided by K.S.A. 44-534a(a)(2). That statute provides in pertinent part:

Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

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<sup>1</sup> K.S.A. 2005 Supp. 44-551.

<sup>2</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

<sup>3</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 303-04, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

<sup>4</sup> See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).

**WHEREFORE**, it is the finding of the Board that the claimant's appeal is dismissed and Administrative Law Judge Robert H. Foerschler's Preliminary Decision dated May 26, 2006, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July, 2006.

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BOARD MEMBER

c: Michael J. Haight, Attorney for Claimant  
Shelley E. Naughtin, Attorney for Respondent and its Insurance Carrier  
Robert H. Foerschler, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director